

III. REMARKS

Claims 3, 10 and 15 have been amended. Claim 2 has been cancelled without prejudice. Claims 1 and 3 - 15 remain pending in the instant application.

Claim 1 was rejected under 35 U.S.C. 103(a) as being unpatentable over Brand et al. (U.S. Patent 4,760,674) in view of Moisture Control Handbook "New, Low-Rise, Residential Construction" by Joseph Lastiburek with John Carmody, October 1991 referred to as "the handbook".

Brand et al. (U.S. Patent 4,760,674) discloses a structural foundation having concrete slab 11 poured over fluid gathering means 15 having waffle like structure and having fluid conduction means 22 to remove moisture from beneath the slab (please see Fig. 1 & 2 and column 4, line 31 through column 5, line 33). As disclosed, moisture removal from below the slab is provided to improve slab stability and to reduce moisture content below the slab to prevent expansion due to freezing (Please see column 2, lines 27-36 and column 5 lines 16-33).

The Handbook discloses basement 3 having masonry block walls having cavity insulation in a pressure treated wood frame wall on the masonry block walls and gypsum board covering the framed wall with the wall extending to a concrete slab over a footing.

No where in Brand et al. (U.S. Patent 4,760,674) either alone or in combination with the Handbook is there a disclosure or suggestion of a water-barrier and drainage system having a continuous embossed plastic drainage panel disposed against an upward facing surface of the floor and having a plurality of

spaced protuberances at the underside thereof, where the drainage panel includes vertical extensions which extend vertically up against the interior peripheral foundation to provide a continuous barrier and water flow for the escape of water as claimed in claim 1.

Instead, Brand et al. (U.S. Patent 4,760,674) discloses a concrete slab 11 poured over fluid gathering means 15 having waffle like structure. Webster defines "floor" as the lower inside surface of a hollow structure or the structure of a surface on which one travels. As such, Brand fails to disclose or suggest a continuous embossed plastic drainage panel disposed against an upward facing surface of the floor as claimed in claim 1, because Brand et al. (U.S. Patent 4,760,674) discloses a concrete slab 11 poured over fluid gathering means 15. Further, Brand et al. (U.S. Patent 4,760,674) teaches away from placing fluid gathering means 15 over concrete slab 11 as, to do so would render Brand et al. (U.S. Patent 4,760,674) inoperable as the stated purpose of Brand et al. (U.S. Patent 4,760,674) is to improve slab stability and to reduce moisture content below the slab to prevent expansion due to freezing (Please see column 2, lines 27-36 and column 5 lines 16-33) where placing fluid gathering means 15 over concrete slab 11 would defeat the disclosed purpose. Thus, there is no disclosure or suggestion of a continuous barrier as claimed in claim 1 as to combine Brand et al. (U.S. Patent 4,760,674) and the Handbook would result in a concrete barrier between the two and, as such, no continuous barrier is disclosed or suggested as required by claim 1. For the reasons set forth, the features of claim 1 are neither disclosed or suggested by Brand et al. (U.S. Patent 4,760,674) either alone or in combination with the Handbook. Accordingly, claim 1 is

patentable over Brand et al. (U.S. Patent 4,760,674) in view of the Handbook.

Claims 1 and 3 were rejected under 35 U.S.C. 103(a) as being unpatentable over Mogstad (U.S. Patent 5,107,642) in view of the Handbook.

Mogstad (U.S. Patent 5,107,642) discloses a foundation wall membrane 1 having an irregular surface sealed against the outer surface of foundation wall 4 to prevent the intrusion of radon gas or unwanted fluids. Concrete floor 6 is disclosed covered with impervious membrane 10 having knobs facing the upper surface and having inner seal 9 extending between slab 6 and wall 4 and above impervious membrane 10.

No where in Mogstad (U.S. Patent 5,107,642) either alone or in combination with the Handbook is there a disclosure or suggestion of a water-barrier and drainage system having a continuous embossed plastic drainage panel disposed against an upward facing surface of the floor and having a plurality of spaced protuberances at the underside thereof, where the drainage panel includes vertical extensions which extend vertically up against the interior peripheral foundation to provide a continuous barrier and water flow for the escape of water as claimed in claim 1. Mogstad (U.S. Patent 5,107,642) discloses concrete floor 6 covered with impervious membrane 10 having inner seal 9 extending between slab 6 and wall 4 and above impervious membrane 10 where inner seal 9 prevents any water flow or escape and is provided to prevent radon gas intrusion. The membrane 10 in Mogstad is not and cannot be a drainage panel. Nor does the Handbook disclose a drainage panel in the examples cited by the

Examiner. Further, to add the insulated and frame wall with gypsum board and with the wall extending to a concrete slab of the Handbook would not provide the water flow and escape of water as required by claim 1 as seal 9 would prevent the flow and escape as required by claim 1. For the reasons set forth, the features of claim 1 are neither disclosed or suggested by Mogstad (U.S. Patent 5,107,642) either alone or in combination with the Handbook. Accordingly, claim 1 is patentable over Mogstad (U.S. Patent 5,107,642) in view of the handbook.

Claim 3 depends upon claim 1. For the reasons set forth above, claim 1 is patentable and, as such, claim 3 is patentable at least by reason of its dependency. Further, no where in Mogstad (U.S. Patent 5,107,642) either alone or in combination with the Handbook is there a disclosure or suggestion of where the vertical extensions are also embossed to provide a plurality of spaced protuberances facing the interior peripheral foundation spacing the vertical extensions from the interior peripheral foundation as claimed in claim 3. Accordingly claim 3 is patentable over Mogstad (U.S. Patent 5,107,642) in view of the Handbook.

Claim 3 was rejected under 35 U.S.C. 103(a) as being unpatentable over Brand et al. (U.S. Patent 4,760,674) in view of the Handbook and further in view of Mogstad (U.S. Patent 5,107,642).

Claim 3 depends upon claim 1. For the reasons set forth above, claim 1 is patentable and, as such, claim 3 is patentable at least by reason of its dependency. Further, Applicant respectfully disagrees that Mogstad (U.S. Patent 5,107,642) teaches a drainage system on top of a concrete floor as Mogstad (U.S. Patent 5,107,642) teaches seal 9, where to remove seal 9

would allow the intrusion of radon gas and would defeat the purpose of the disclosure of Mogstad (U.S. Patent 5,107,642). Further, no where in Mogstad (U.S. Patent 5,107,642) either alone or in combination with the Handbook is there a disclosure or suggestion of where the vertical extensions are also embossed to provide a plurality of spaced protuberances facing the interior peripheral foundation spacing the vertical extensions from the interior peripheral foundation as claimed in claim 3. Accordingly claim 3 is patentable over Brand et al. (U.S. Patent 4,760,674) in view of the Handbook and further in view of Mogstad (U.S. Patent 5,107,642).

Claims 4-6 were rejected under 35 U.S.C. 103(a) as being unpatentable over Brand et al. (U.S. Patent 4,760,674) in view of the Handbook and further in view of Jennemann (U.S. Patent 5,836,815) and under 35 U.S.C. 103(a) as being unpatentable over Mogstad (U.S. Patent 5,107,642) in view of the Handbook and further in view of Jennemann (U.S. Patent 5,836,815).

Claims 4-6 depend upon claim 1. For the reasons set forth above relating to claim 1, the features of claims 4-6 are patentable under 35 U.S.C. 103(a).

Claim 12 was rejected under 35 U.S.C. 103(a) as being unpatentable over Brand et al. (U.S. Patent 4,760,674) in view of the Handbook and further in view of the publication "Sealed Crawlspace Specifications by Craig DeWitt, Ph.D., PE, published August 20, 2001, hereinafter referred to as "DeWitt".

DeWitt discloses where foundation walls may be insulated with rigid insulation.

Claim 12 depends upon claim 1 and, as such, claim 12 is patentable at least by reason of its dependency. Further, nowhere in Brand et al. (U.S. Patent 4,760,674) either alone or in combination with the Handbook or DeWitt is there a disclosure or suggestion of where the edges of the embossed drainage panel covering the floor of the crawlspace are sealed to the insulation board as claimed in claim 12. Instead, the Handbook discloses gypsum board with sealant against concrete and DeWitt discloses rigid insulation where Brand et al. (U.S. Patent 4,760,674) discloses nothing on the wall and no panel covering the floor and, as such, there is no disclosure or suggestion of where the edges of the embossed drainage panel covering the floor of the crawlspace are sealed to the insulation board as claimed in claim 12. Accordingly, claim 12 is patentable under 35 U.S.C. 103(a) over Brand et al. (U.S. Patent 4,760,674) in view of the Handbook and further in view of DeWitt.

Claim 12 was rejected under 35 U.S.C. 103(a) as being unpatentable over Mogstad (U.S. Patent 5,107,642) in view of the Handbook and further in view of DeWitt.

Claim 12 depends upon claim 1 and, as such, claim 12 is patentable at least by reason of its dependency. Further, nowhere in Mogstad (U.S. Patent 5,107,642) either alone or in combination with the Handbook or DeWitt is there a disclosure or suggestion of where the edges of the embossed drainage panel covering the floor of the crawlspace are sealed to the insulation board as claimed in claim 12. Instead, the Handbook discloses gypsum board with sealant against concrete and DeWitt discloses rigid insulation where Mogstad (U.S. Patent 5,107,642) discloses nothing on the wall and seal 9 and, as such, there is no disclosure or suggestion of where the edges of the embossed

drainage panel covering the floor of the crawlspace are sealed to the insulation board as claimed in claim 12. Accordingly, claim 12 is patentable under 35 U.S.C. 103(a) over Mogstad (U.S. Patent 5,107,642) in view of the Handbook and further in view of DeWitt.

Claims 7-10 and 13-15 were rejected under 35 U.S.C. 103(a) as being unpatentable over Brand et al. (U.S. Patent 4,760,674) in view of Builder's Foundation Handbook by John Carmody, Jeffrey Christian and Kenneth Labs, published May 1991, hereinafter "The Foundation Handbook.

The Foundation Handbook discloses fiberglass insulation with vapor retarder on the inside extending over an edge of a floor up a wall and having a vapor retarder between the floor and the insulation and between the wall and the insulation to above grade (optional) with vapor retarder on the floor (please see page 52).

With respect to claims 7, 13 and 14, nowhere in Brand et al. (U.S. Patent 4,760,674) either alone or in combination with the Foundation Handbook is there a disclosure or suggestion of a water-barrier and drainage system having a continuous embossed plastic drainage panel disposed against an upward facing surface of the floor and having a plurality of spaced protuberances at the underside thereof, where the drainage panel includes vertical extensions which extend vertically up against the interior peripheral foundation to provide a continuous barrier and water flow for the escape of water as claimed in claims 7, 13 and 14. As applied to claim 1 above, Brand fails to disclose or suggest a continuous embossed plastic drainage panel disposed against an upward facing surface of the floor and teaches away from placing fluid gathering means 15 over concrete slab 11 as, to do so would render Brand et al. (U.S. Patent 4,760,674) inoperable. To

combine Brand et al. (U.S. Patent 4,760,674) and the Foundation Handbook would result in the vapor retarder of the Foundation Handbook on a slab and the gathering means 15 of Brand et al. (U.S. Patent 4,760,674) under the slab with no disclosure or suggestion of a continuous embossed plastic drainage panel disposed against an upward facing surface of the floor and having a plurality of spaced protuberances at the underside thereof, where the drainage panel includes vertical extensions which extend vertically up against the interior peripheral foundation to provide a continuous barrier and water flow for the escape of water as claimed in claims 7, 13 and 14. For the reasons set forth, the features of claims 7, 13 and 14 are neither disclosed or suggested by Brand et al. (U.S. Patent 4,760,674) either alone or in combination with the Foundation Handbook. Accordingly, claims 7, 13 and 14 are patentable over Brand et al. (U.S. Patent 4,760,674) in view of the Handbook.

Claims 8-9 depend upon claim 7. For the reasons set forth above relating to, claim 7, claims 8-9 are patentable under 35 U.S.C. 103(a).

Claims 10 and 15 are patentable at least by reason of their respective dependencies. Further, nowhere in Brand et al. (U.S. Patent 4,760,674) either alone or in combination with the Foundation Handbook is there a disclosure or suggestion of where the vertical extensions are also embossed to provide a plurality of spaced protuberances facing the interior peripheral foundation spacing the vertical extensions from the interior peripheral foundation as claimed. Accordingly, claims 10 and 15 are patentable under 35 U.S.C. 103(a) over Brand et al. (U.S. Patent 4,760,674) in view of The Foundation Handbook.

Claim 11 was rejected under 35 U.S.C. 103(a) as being unpatentable over Brand et al. (U.S. Patent 4,760,674) in view of The Foundation Handbook and further in view of Mogstad (U.S. Patent 5,107,642).

Claim 11 depends upon claim 7. For the reasons set forth above relating to, claim 7, claim 11 is patentable under 35 U.S.C. 103(a).

Claims 7-11 and 13-15 were rejected under 35 U.S.C. 103(a) as being unpatentable over Mogstad (U.S. Patent 5,107,642) in view of The Foundation Handbook.

With respect to claims 7, 13 and 14, nowhere in Mogstad (U.S. Patent 5,107,642) either alone or in combination with The Foundation Handbook is there a disclosure or suggestion of a water-barrier and drainage system having a continuous embossed plastic drainage panel disposed against an upward facing surface of the floor and having a plurality of spaced protuberances at the underside thereof to provide water flow space for drainage of water, where the drainage panel includes vertical extensions which extend vertically up against the interior peripheral foundation to provide a continuous barrier and water flow for the escape of water as claimed in claims 7, 13 and 14. Instead, Mogstad (U.S. Patent 5,107,642) discloses concrete floor 6 covered with impervious membrane 10 having inner seal 9 extending between slab 6 and wall 4 and above impervious membrane 10 where inner seal 9 prevents any water flow or escape and is provided to prevent radon gas intrusion. Further, to add the insulation with vapor retarder on the inside extending over an edge of a floor up a wall and a vapor retarder between the floor and the insulation and between the wall and the insulation with vapor retarder on

the floor of The Foundation Handbook would trap condensation and water and would not provide the water flow and escape of water as required by claims 7, 13 and 14 as seal 9 would prevent the flow and escape as required by claims 7, 13 and 14. For the reasons set forth, the features of claims 7, 13 and 14 are neither disclosed or suggested by Mogstad (U.S. Patent 5,107,642) either alone or in combination with The Foundation Handbook. Accordingly, claims 7, 13 and 14 are patentable over Mogstad (U.S. Patent 5,107,642) in view of The Foundation Handbook.

Claims 8-9 and 11 depend upon claim 7. For the reasons set forth above relating to, claim 7, claims 8-9 and 11 are patentable under 35 U.S.C. 103(a).

Claim 10 depends upon claim 7 and, as such, claim 10 is patentable at least by reason of its dependency. Further, nowhere in Mogstad (U.S. Patent 5,107,642) either alone or in combination with the Foundation Handbook is there a disclosure or suggestion of where the vertical extensions are also embossed to provide a plurality of spaced protuberances facing the interior peripheral foundation spacing the vertical extensions from the interior peripheral foundation as claimed in claim 10. Accordingly, claim 10 is patentable under 35 U.S.C. 103(a) over Mogstad (U.S. Patent 5,107,642) in view of The Foundation Handbook.

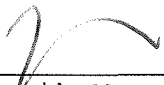
Claim 15 depends upon claim 14. For the reasons set forth above relating to, claim 14, claim 15 is patentable under 35 U.S.C. 103(a).

For all of the foregoing reasons, it is respectfully submitted that all of the claims now present in the application are clearly

novel and patentable over the prior art of record, and are in proper form for allowance. Accordingly, favorable reconsideration and allowance is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

The Commissioner is hereby authorized to charge payment for any fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,



Janik Marcovici
Reg. No. 42,841

7/26/10

Date

Perman & Green, LLP
99 Hawley Lane
Stratford, CT 06614
(203) 259-1800
Customer No.: 2512